

103^D CONGRESS
1ST SESSION

H. R. 132

To amend the Social Security Act to protect consumers through the establishment of standards for long-term care insurance policies.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mrs. COLLINS of Illinois introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Social Security Act to protect consumers through the establishment of standards for long-term care insurance policies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Long-Term Care Insurance Standards and Consumer
6 Protection Act of 1993”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Establishment of national standards for long-term care insurance.

“TITLE XXI—LONG-TERM CARE INSURANCE STANDARDS

“PART A—GENERAL REQUIREMENT; ESTABLISHMENT OF STANDARDS

“Subpart 1—Establishment and Application of Standards

- “Sec. 2101. General requirement.
- “Sec. 2102. Establishment of standards.
- “Sec. 2103. Deadline for application of standards in States.
- “Sec. 2104. Relation to State law.
- “Sec. 2105. Steering committee on long-term care insurance standards.

“Subpart 2—Code of Conduct for Endorsements; Agent Training and Certification Programs

- “Sec. 2111. Guidelines for code of conduct with respect to endorsements.
- “Sec. 2112. Requirements for agent training and certification programs.

“Subpart 3—Definitions

- “Sec. 2116. Long-term care insurance policy.
- “Sec. 2117. Other terms.

“PART B—STANDARDS

“Subpart 1—Policy Standards

- “Sec. 2121. Use of standard definitions and terminology and uniform format.
- “Sec. 2122. Minimum benefits; limiting conditions on benefits.
- “Sec. 2123. Prohibition of discrimination against individuals with Alzheimer’s and related diseases.
- “Sec. 2124. Limitation on use of preexisting condition limits.
- “Sec. 2125. Use of functional assessment.
- “Sec. 2126. Requirements for premiums and premium increases.
- “Sec. 2127. Inflation protection.
- “Sec. 2128. Nonforfeiture benefits.
- “Sec. 2129. Designation of representatives.
- “Sec. 2130. Renewal and policy upgrades.

“Subpart 2—Sales Practices

- “Sec. 2131. Certification of training of sales agents.
- “Sec. 2132. Duty of good faith and fair dealing.
- “Sec. 2133. Financial guidelines.
- “Sec. 2134. Prohibition of sale or issuance to medicaid beneficiaries.
- “Sec. 2135. Prohibition of sale or issuance of duplicate policies.
- “Sec. 2136. Provision of outline of coverage and other information.
- “Sec. 2137. Information on financial arrangements with groups.

“Subpart 3—Carrier Standards

- “Sec. 2141. Refund of premiums (free look).
- “Sec. 2142. Mailing of policy.
- “Sec. 2143. Prompt payment.
- “Sec. 2144. Information on claims denials.
- “Sec. 2145. Limitation on rescission, cancellation, or nonrenewal or denial of claims.

“Sec. 2146. Reporting of information; access to information.

“Sec. 2147. Provision of outline of coverage for renewals.

“PART C—ENFORCEMENT OF STANDARDS

“Subpart 1—General Provisions

“Sec. 2151. Secretarial enforcement authority.

“Sec. 2152. Complaints and investigations.

“Sec. 2153. Hearings.

“Sec. 2154. Cease and desist order with civil money penalty.

“Sec. 2155. Establishment of toll-free telephone hotline.

“Subpart 2—Conditions for Approval of State Regulatory Programs

“Sec. 2161. General requirement.

“Sec. 2162. Enforcement.

“Sec. 2163. Toll-free telephone system.

“Sec. 2164. Publication of information.

“Sec. 2165. Process for approval of premiums.

“Sec. 2166. Annual reports.

“Sec. 2167. Increase in funding for long-term care insurance, information, counseling, and assistance through State regulatory programs.

Sec. 3. Study of standard measure of value for long-term care insurance policies.

Sec. 4. Waiver of paperwork requirements.

1 **SEC. 2. ESTABLISHMENT OF NATIONAL STANDARDS FOR**
 2 **LONG-TERM CARE INSURANCE.**

3 The Social Security Act is amended by adding at the
 4 end the following new title:

5 “TITLE XXI—LONG-TERM CARE INSURANCE
 6 STANDARDS

7 “PART A—GENERAL REQUIREMENT; ESTABLISHMENT
 8 OF STANDARDS

9 “Subpart 1—Establishment and Application of
 10 Standards

11 “GENERAL REQUIREMENT

12 “SEC. 2101. (a) APPROVED REGULATORY STATES.—
 13 No long-term care insurance policy (as defined in section

1 2116) may be issued, sold, or offered for sale in a State
2 which has a regulatory program that the Secretary has
3 approved consistent with the requirements of subpart 2
4 of part C, on or after the date specified in section 2103,
5 unless the policy has been certified by the State commis-
6 sioner of insurance under such program as meeting the
7 standards established under such program in the State.

8 “(b) OTHER STATES.—No long-term care insurance
9 policy may be issued, sold, or offered for sale in a State
10 that does not have such an approved regulatory program,
11 on or after the date specified in section 2103, unless the
12 policy has been certified by the Secretary (in accordance
13 with such procedures as the Secretary may establish by
14 regulation) as meeting the standards established under
15 section 2102.

16 “(c) TREATMENT OF ADVERTISING AND SOLICIT-
17 ING.—For purposes of this section, the advertising or so-
18 liciting with respect to a policy, directly or indirectly, shall
19 be deemed the offering for sale of the policy.

20 “ESTABLISHMENT OF STANDARDS

21 “SEC. 2102. (a) APPLICATION OF STANDARDS.—

22 “(1) NAIC.—If, within 12 months after the
23 date of the enactment of this title, the National As-
24 sociation of Insurance Commissioners promulgates
25 model standards that incorporate the requirements
26 of part B and subpart 2 of part C, such standards

1 shall apply under section 2101, effective on the date
2 specified in section 2103(a).

3 “(2) SUBSEQUENT STANDARDS.—If the NAIC
4 modifies the model standards previously established
5 under this subsection in a manner consistent with
6 the requirements of part B and subpart 2 of part C,
7 such modified standards shall apply under section
8 2101, effective as of the date specified in section
9 2103(a).

10 “(3) USE OF TERM ‘STANDARDS’.—In this title,
11 the term ‘Standards’ means all standards estab-
12 lished under this section that apply in a State under
13 section 2101 and includes, with respect to subpart
14 2 of part C, standards to carry out the requirements
15 for State regulatory programs under such subpart.

16 “(b) DEFAULT.—If the NAIC does not promulgate
17 the model standards under subsection (a) by the deadline
18 established in that subsection, the Secretary shall promul-
19 gate, within 12 months after such deadline, a regulation
20 that provides standards that incorporate the requirements
21 of part B and subpart 2 of part C and such standards
22 shall apply under section 2101.

23 “(c) BALANCE IN STANDARDS.—The standards for
24 long-term care insurance established under this title shall
25 reflect a balance between—

1 “(1) the goal of protecting consumers through
2 assuring they are appropriately informed and receive
3 adequate value for their purchase, and

4 “(2) the goal of allowing the appropriate devel-
5 opment of long-term care insurance products and
6 the market for such products.

7 “DEADLINE FOR APPLICATION OF STANDARDS IN STATES

8 “SEC. 2103. (a) IN GENERAL.—For purposes of this
9 part, with respect to initial standards or subsequent stand-
10 ards established under section 2102, the date specified in
11 this section for a State is whichever of the following is
12 earlier:

13 “(1) The date the State adopts such initial or
14 subsequent standards.

15 “(2) 1 year after the first day of the first legis-
16 lative session of the State legislature that begins
17 after the date such initial or subsequent standards
18 are established.

19 “(b) TREATMENT OF STATES WITH 2-YEAR LEGIS-
20 LATIVE SESSIONS.—In applying subsection (a)(2) in the
21 case of a State that has a 2-year legislative session, each
22 year of such session shall be deemed to be a separate ses-
23 sion of the State legislature.

24 “RELATION TO STATE LAW

25 “SEC. 2104. (a) PREEMPTION.—Except as provided
26 in subsection (b), the Standards established under section

1 2102 preempt provisions of State law which conflict with
2 such Standards.

3 “(b) STRICTER STANDARDS PERMITTED.—A State
4 may apply standards that provide greater protection to
5 policyholders of long-term care insurance policies than the
6 Standards so long as such standards are not inconsistent
7 or in conflict with any of the requirements of this title.

8 “STEERING COMMITTEE ON LONG-TERM CARE
9 INSURANCE STANDARDS

10 “SEC. 2105. (a) ESTABLISHMENT.—

11 “(1) IN GENERAL.—The NAIC shall establish a
12 Steering Committee on Long-Term Care Insurance
13 Standards (in this section referred to as the ‘Com-
14 mittee’).

15 “(2) SECRETARIAL ESTABLISHMENT.—In case
16 the Secretary is required to promulgate standards
17 under section 2102(b)—

18 (A) the Secretary shall establish a Steering
19 Committee on Long-Term Care Insurance
20 Standards (in this section referred to as the
21 ‘Committee’), and

22 (B) any subsequent reference in this sec-
23 tion to the NAIC is deemed a reference to the
24 Secretary.

25 “(b) COMPOSITION.—

1 “(1) IN GENERAL.—The Committee shall be
2 composed of 11 individuals to be appointed by the
3 NAIC as follows:

4 “(A) 3 individuals who are representative
5 of consumer groups and who have substantial
6 knowledge and expertise on the issue of long-
7 term care insurance.

8 “(B) 3 individuals who are representative
9 of the long-term care insurance carriers.

10 “(C) 1 individual who is representative of
11 agents who sell long-term care insurance.

12 “(D) 1 individual who is representative of
13 providers of long-term care services.

14 “(E) 1 individual who is a counselor or
15 consultant to purchasers of long-term care in-
16 surance.

17 “(F) 2 individuals who are experts in long-
18 term care insurance who are from universities
19 or independent institutions and are not rep-
20 resentative of consumer groups, carriers,
21 agents, or providers.

22 “(2) TERMS.—Members of the Committee shall
23 be appointed for terms of 3 years, except that the
24 initial members shall be appointed for staggered
25 terms as determined appropriate by the NAIC.

1 “(c) FUNCTIONS.—

2 “(1) IN GENERAL.—The Committee shall make
3 detailed recommendations to (and otherwise advise)
4 the NAIC concerning—

5 “(A) the minimum standards for long-term
6 care insurance consistent with the provisions of
7 this title; and

8 “(B) the modification of such standards
9 consistent with future laws to expand existing
10 Federal or State long-term care benefits or en-
11 hance protection of consumers.

12 “(2) GENERAL CONSULTATION REQUIRE-
13 MENT.—NAIC shall carry out its activities under
14 this title in consultation with the Committee.

15 “(d) SUPPORT.—The NAIC shall provide such assist-
16 ance as may be necessary for the operation of the Commit-
17 tee, which assistance may include per diem compensation
18 and travel expenses for members of the Committee while
19 serving on the business of the Committee.

20 “(e) COMMITTEE AUTHORITY.—The Committee
21 may—

22 “(1) seek such assistance and support as may
23 be required in the performance of its duties from ap-
24 propriate Federal departments and agencies, and

1 “(2) prescribe such rules and regulations as it
2 deems necessary with respect to the internal organi-
3 zation and operation of the Committee.

4 “(f) ANNUAL REPORT.—Not later than March 31 of
5 each year, the NAIC is requested to prepare and submit
6 to the Congress a report concerning the activities of the
7 NAIC and of the Committee under this title during the
8 previous year.

9 “Subpart 2—Code of Conduct for Endorsements; Agent
10 Training and Certification Programs

11 “GUIDELINES FOR CODE OF CONDUCT WITH RESPECT TO
12 ENDORSEMENTS

13 “SEC. 2111. Not later than 1 year after the date of
14 enactment of this title, the NAIC shall issue guidelines
15 that shall apply to organizations and associations and
16 their subsidiaries that provide endorsements of long-term
17 care insurance policies, or that permit such policies to be
18 offered for sale through the organization or association or
19 subsidiary. Such guidelines shall include, at a minimum,
20 the following:

21 “(1) In endorsing or selling long-term care in-
22 surance policies, the primary responsibility of an or-
23 ganization or association or its subsidiary shall be to
24 educate their members concerning such policies and
25 assist such members in making informed decisions.

1 Such organizations and associations and their sub-
2 sidiaries may not function primarily as sales agents
3 for insurance companies.

4 “(2) Organizations and associations and their
5 subsidiaries shall provide objective information re-
6 garding long-term care insurance policies sold or en-
7 dorsed by such organizations, associations, and sub-
8 sidiaries to ensure that members of such organiza-
9 tions, associations, and subsidiaries have a balanced
10 and complete understanding of both the strengths
11 and weaknesses of the policies that are being en-
12 dorsed or sold.

13 “(3) Organizations and associations and their
14 subsidiaries selling or endorsing long-term care in-
15 surance policies shall disclose, in marketing lit-
16 erature concerning such policies that is provided to
17 their members, the manner in which such policies
18 and the insurance company issuing such policies
19 were selected. If the organization, association, or
20 subsidiary and the insurance company have inter-
21 locking directorates, the organization, association, or
22 subsidiary shall disclose such fact to their members.

23 “(4) Organizations and associations and their
24 subsidiaries selling or endorsing long-term care in-
25 surance policies shall disclose, in marketing lit-

1 erature concerning such policies that is provided to
2 their members, the precise nature and amount of the
3 compensation arrangements (including all fees, com-
4 missions, administrative fees and other forms of fi-
5 nancial support) that the organization, association,
6 or subsidiary receives from the endorsement or sale
7 of the policies to its members. The Boards of Direc-
8 tors of organizations and associations and their sub-
9 sidiaries selling or endorsing long-term care insur-
10 ance policies shall review and approve the compensa-
11 tion arrangements relating to such policies.

12 “(5) Organizations and associations and their
13 subsidiaries selling or endorsing long-term care in-
14 surance policies to their members also—

15 “(A) shall disclose, in summary form, the
16 most recent information available pertaining to
17 the financial status (including solvency) of the
18 carrier;

19 “(B) shall make periodic actuarial or inde-
20 pendent examinations of the policies, including
21 their benefits, features, and rates;

22 “(C) shall actively monitor the marketing
23 efforts, with respect to its members, of the car-
24 rier and its agents;

1 “(D) shall review and approve all market-
2 ing materials or other insurance communica-
3 tions used to promote sales among, or sent to,
4 members regarding such policies; and

5 “(E) shall file with the State insurance
6 commissioner of the State in which they are
7 based—

8 “(i) a copy of the policies,

9 “(ii) a copy of the outline of coverage
10 which accompanies such policies,

11 “(iii) a copy of each advertising and
12 other marketing materials utilized in con-
13 nection with the sale or endorsement of
14 such policies, and

15 “(iv) a statement of compliance with
16 all the requirements of this section.

17 “REQUIREMENTS FOR AGENT TRAINING AND
18 CERTIFICATION PROGRAMS

19 “SEC. 2112. (a) ESTABLISHMENT.—The NAIC shall
20 establish requirements for long-term care insurance agent
21 training and certification that—

22 “(1) specify requirements for a training pro-
23 gram, either as part of a life-health insurance train-
24 ing program or as a separate long-term care insur-
25 ance training program, to train insurance agents

1 who desire to sell or offer for sale long-term care in-
2 surance policies;

3 “(2) specify that the agent must pass either—

4 “(A) a comprehensive examination on long-
5 term care insurance coverage and appropriate
6 sales techniques, or

7 “(B) an equally comprehensive long-term
8 care insurance portion of another examination
9 required by a State in order for the agent to
10 sell another insurance product in the State;

11 “(3) specify procedures for certifying agents
12 who have completed such program as qualified to
13 sell or offer for sale long-term care insurance poli-
14 cies; and

15 “(4) specify, on or after 18 months after the
16 date of establishment of such requirements, that no
17 one without a certification may sell or offer for sale
18 a long-term care insurance policy.

19 “(b) ADMINISTRATION.—The program established
20 under subsection (a) shall be administered in each State
21 through the State insurance commissioner.

22 “(c) CONTINUING EDUCATION REQUIREMENTS.—

23 “(1) ESTABLISHMENT.—The NAIC shall con-
24 sider the appropriateness of establishing, and may
25 establish, continuing education requirements for

1 agents who continue to sell long-term care insurance
2 policies.

3 “(2) APPLICATION OF REQUIREMENTS.—For
4 purposes of this title, if the NAIC has established a
5 continuing education requirement under paragraph
6 (1), an individual shall not be considered to be cer-
7 tified under a training and certification program es-
8 tablished under this section unless the individual
9 meets such continuing education requirement.

10 “Subpart 3—Definitions

11 “LONG-TERM CARE INSURANCE POLICY

12 “SEC. 2116. (a) IN GENERAL.—In this title, except
13 as otherwise provided in this section, the term ‘long-term
14 care insurance policy’ means any insurance policy, certifi-
15 cate, or rider advertised, marketed, offered, or designed
16 to provide coverage for each covered individual on an ex-
17 pense incurred, indemnity, prepaid, service-benefit, or
18 other basis, for one or more diagnostic, preventive, thera-
19 peutic, rehabilitative, maintenance or personal care serv-
20 ices, provided in a setting other than an acute care unit
21 of a hospital. Such term includes a group or individual
22 annuity or life insurance policy or rider which provides di-
23 rectly (or which supplements) long-term care insurance
24 described in the previous sentence.

1 “(b) POLICIES EXCLUDED.—Except as provided in
2 subsections (c) and (d), in this title the term ‘long-term
3 care insurance policy’ does not include any medicare sup-
4 plemental policy (as defined in section 1882(g)) and any
5 insurance which is offered primarily to provide—

6 “(1) basic hospital expense coverage, basic med-
7 ical-surgical expense coverage, hospital confinement
8 indemnity coverage, or major medical expense cov-
9 erage,

10 “(2) disability income or related asset-protec-
11 tion coverage,

12 “(3) accident only coverage,

13 “(4) specified disease or specified accident cov-
14 erage, or

15 “(5) limited benefit health coverage.

16 “(c) INCLUSION OF POLICIES MARKETING AS LONG-
17 TERM CARE INSURANCE.—In this title, the term ‘long-
18 term care insurance policy’ also includes any product
19 which is advertised, marketed, or offered as long-term care
20 insurance.

21 “(d) DISCLOSURE REQUIREMENTS FOR CERTAIN
22 DISABILITY INCOME POLICIES AND LIFE INSURANCE
23 POLICIES.—

24 “(1) IN GENERAL.—In this title, the term ‘long-
25 term care insurance policy’ includes—

1 “(A) a policy described in subsection (b)(2)
2 under which the eligibility or amount of benefits
3 are based on an assessment of functional ability
4 (based on activities of daily living or otherwise),
5 or

6 “(B) a life insurance policy described in
7 paragraph (3),
8 if the disclosure requirements of paragraph (2) are
9 not met.

10 “(2) DISCLOSURE REQUIREMENTS.—The disclo-
11 sure requirements of this paragraph for a policy are
12 that—

13 “(A) the policy discloses (in a form and
14 manner specified in the Standards) the fact
15 that the policy is not a long-term care insur-
16 ance policy;

17 “(B) the policy outlines how the benefits in
18 the policy differ from the benefits required to
19 be provided under the Standards of a long-term
20 care insurance policy; and

21 “(C) in the case of a life-insurance policy
22 described in subsection (c), at the time of policy
23 delivery there is provided to the purchaser and
24 the beneficiary a policy summary that in-
25 cludes—

1 “(i) an explanation of how the long-
2 term care benefits interact with other com-
3 ponents of the policy (including deductions
4 from death benefits);

5 “(ii) a description of the amount and
6 length of benefits and the guaranteed life-
7 time benefits (if any) for each covered indi-
8 vidual; and

9 “(iii) any exclusions, reductions, and
10 limitations on benefits of long-term care.

11 “(3) CERTAIN LIFE INSURANCE POLICIES.—A
12 life insurance policy described in this paragraph is
13 one—

14 “(A) which accelerates the death benefit
15 specifically for—

16 “(i) one or more of the qualifying
17 events of terminal illness,

18 “(ii) medical conditions requiring ex-
19 traordinary medical intervention, or

20 “(iii) permanent institutional confine-
21 ment;

22 “(B) which provides the option of a lump-
23 sum payment for those benefits; or

24 “(C) which provides benefits based on the
25 use of nursing facility care.

1 “OTHER TERMS

2 “SEC. 2117. In this title:

3 “(1) AGENT.—The term ‘agent’ means—

4 “(A) prior to 1 year after the date of the
5 establishment of the agent training and certifi-
6 cation requirements of section 2112, an individ-
7 ual who sells or offers for sale a long-term care
8 insurance policy subject to the requirements of
9 section 2101; and

10 “(B) after the date referred to in subpara-
11 graph (A), an individual certified under a train-
12 ing and certification program established under
13 section 2112.

14 “(2) APPROVED REGULATORY PROGRAM.—The
15 term ‘approved regulatory program’ means a regu-
16 latory program in a State that the Secretary has ap-
17 proved consistent with the requirements of subpart
18 2 of part C.

19 “(3) APPROVED REGULATORY STATE; NON-
20 REGULATORY STATE.—The term ‘approved regu-
21 latory State’ means a State with an approved regu-
22 latory program (as defined in paragraph (2)) and
23 the term ‘nonregulatory State’ means a State other
24 than an approved regulatory State.

1 “(4) CARRIER.—The term ‘carrier’ means any
 2 person that issues a long-term care insurance policy,
 3 including a licensed insurance company, a prepaid
 4 hospital or medical service plan, a health mainte-
 5 nance organization, and a multiple small employer
 6 welfare arrangement.

7 “(5) STATE COMMISSIONER OF INSURANCE.—
 8 The term ‘State commissioner of insurance’ includes
 9 a State superintendent of insurance.

10 “(6) STEERING COMMITTEE.—The term ‘steer-
 11 ing committee’ means the Steering Committee on
 12 Long-Term Care Insurance Standards established
 13 under section 2104(a).

14 “(7) NAIC.—The term ‘NAIC’ means the Na-
 15 tional Association of Insurance Commissioners.

16 “PART B—STANDARDS

17 “Subpart 1—Policy Standards

18 “USE OF STANDARD DEFINITIONS AND TERMINOLOGY

19 AND UNIFORM FORMAT

20 “SEC. 2121. Each long-term care insurance policy
 21 shall, pursuant to the Standards—

22 “(1) use uniform language and definitions for
 23 description of benefits, coverage, providers of cov-
 24 ered services, facilities at which covered services are
 25 rendered, and eligibility for benefits, including defi-

1 nitions of ‘home and community care services’ and
 2 of ‘nursing facility services’, and

3 “(2) use a uniform format and simple, easily
 4 understood English for presenting the marketing
 5 material and outline of coverage under such a policy.

6 In establishing the Standards that specify the language
 7 and definitions under paragraph (1), such language and
 8 definitions shall take into account the definitions and ter-
 9 minology used by States in relation to long-term care serv-
 10 ices and providers.

11 “MINIMUM BENEFITS; LIMITING CONDITIONS ON
 12 BENEFITS

13 “SEC. 2122. (a) MINIMUM BENEFITS.—In general.—
 14 A long-term care insurance policy shall provide benefits
 15 either—

16 “(1) for nursing facility services, but not for
 17 home and community care services, and be labeled
 18 prominently as a ‘nursing home care’ policy;

19 “(2) for home and community care services, but
 20 not for nursing facility services, and be labeled
 21 prominently as a ‘home and community care’ policy;
 22 or

23 “(3) for both nursing facility services and home
 24 and community care services, and be labeled promi-
 25 nently as a ‘comprehensive long-term care’ policy.

1 “(b) RESTRICTIONS ON CONDITIONS.—A long-term
2 care insurance policy may not condition or limit eligi-
3 bility—

4 “(1) for benefits for a type of services to the
5 need for or receipt of any other services, including
6 prior hospitalization;

7 “(2) for any benefit solely on the medical neces-
8 sity for such benefit;

9 “(3) for benefits furnished by licensed or cer-
10 tified providers on compliance with conditions which
11 are in addition to those required for licensure or cer-
12 tification under State law;

13 “(4) for nursing facility services (if covered
14 under the policy) only—

15 “(A) to care provided in facilities which
16 provide a specified level of care; or

17 “(B) to care provided in facilities which
18 provide for 24-hour or other nursing care not
19 required in order to be licensed by the State; or

20 “(5) for benefits on the continued payment of
21 premiums during periods when the policyholder or
22 certificate holder is eligible for benefits under the
23 long-term care insurance policy.

24 “(c) HOME AND COMMUNITY CARE SERVICES.—

1 “(1) SERVICES INCLUDED.—Home and commu-
2 nity care services under a long-term care insurance
3 policy shall include—

4 “(A) home-based services (described in
5 paragraph (2)) which are provided in a place of
6 residence used as the individual’s home (or, in
7 the case of services described in subparagraphs
8 (C), (F), and (G) of that paragraph, which may
9 be provided outside the individual’s residence),
10 and

11 “(B) community-based services (described
12 in paragraph (3)).

13 “(2) HOME-BASED SERVICES.—The home-based
14 services described in this paragraph are as follows:

15 “(A) Nursing care provided by or under
16 the supervision of a registered professional
17 nurse.

18 “(B) Services which—

19 “(i) are furnished by a homemaker/
20 home health aide who has successfully
21 completed a training and competency eval-
22 uation program that meets minimum
23 standards established by the Secretary
24 under section 1891(a)(3)(D), and

1 “(ii)(I) are related to the inability of
2 the policyholder or certificate holder to
3 perform activities of daily living or instru-
4 mental activities of daily living, or (II) in
5 the case of an individual described in sec-
6 tion 2123, consist of providing supervision.

7 “(C) Personal assistance services furnished
8 by an individual who has successfully completed
9 a training and competency evaluation program
10 that meets minimum standards established by
11 the Secretary.

12 “(D) Medical social services.

13 “(E) Physical, occupational, or respiratory
14 therapy or speech-language pathology.

15 “(F) Provision of, or assistance with, med-
16 ical supplies (other than drugs and biologicals),
17 assistive technologies, and equipment that assist
18 in the performance of activities of daily living.

19 “(G) Patient and caregiver (including fam-
20 ily caregiver) education and training to develop
21 skills necessary to permit the individual to re-
22 main in the home setting.

23 “(H) Respite care.

24 “(I) Such other home-based items and
25 services as the Secretary may approve.

1 “(3) COMMUNITY-BASED SERVICES.—The com-
2 munity-based services described in this paragraph
3 are as follows:

4 “(A) Adult day care services provided by
5 an adult day care program that meets such
6 standards (including the provision of at least 1
7 meal a day and the provision of necessary
8 transportation) established by the Secretary.

9 “(B) In the case of individuals with chron-
10 ic mental illness, day treatment or other partial
11 hospitalization services, psychosocial rehabilita-
12 tion services, and clinic services (whether or not
13 furnished in a facility), but not including indi-
14 vidual therapy.

15 “(C) Such other community-based items
16 and services as the Secretary may approve.

17 “(4) LIMITATIONS ON CONDITIONS.—If a long-
18 term care insurance policy provides benefits for
19 home and community care services, the policy—

20 “(A) may not limit such benefits to serv-
21 ices provided by registered nurses, licensed
22 practical nurses, occupational, physical, or
23 speech therapists, or social workers;

24 “(B) may not require benefits for such
25 services to be provided by a nurse or therapist

1 that can be provided by a home health aide or
2 licensed or certified home care worker acting
3 within the scope of the worker's licensure or
4 certification;

5 “(C) may not limit such benefits to serv-
6 ices provided by agencies or providers certified
7 under title XVIII;

8 “(D) may not limit or exclude benefits for
9 such services by requiring that the policyholder
10 have an acute condition before home and com-
11 munity care services are covered; and

12 “(E) shall provide at least 365 days of
13 benefits for such services.

14 “(d) NURSING FACILITY SERVICES.—

15 “(1) TYPES OF SERVICES.—Nursing facility
16 services under a long-term care insurance policy
17 shall include the following:

18 “(A) Nursing care provided by or under
19 the supervision of a registered professional
20 nurse.

21 “(B) Bed and board in connection with the
22 furnishing of such nursing care.

23 “(C) Physical, occupational, or respiratory
24 therapy, or speech-language pathology, fur-

1 nished by the facility or by others under ar-
2 rangements with them made by the facility.

3 “(D) Medical social services.

4 “(E) Such drugs, biologicals, supplies, ap-
5 pliances, and equipment, furnished for use in
6 the facility as are ordinarily furnished by such
7 facility for the care and treatment of residents.

8 “(F) Medical services provided by an in-
9 tern or resident-in-training of a hospital with
10 which the facility has in effect a transfer agree-
11 ment (meeting the requirements of section
12 1861(l)), under a teaching program of such
13 hospital approved as provided in the last sen-
14 tence of section 1861(b), and other diagnostic
15 or therapeutic services provided by a hospital
16 with which the facility has such an agreement
17 in effect.

18 “(G) Such other services necessary to the
19 health of the residents as are generally provided
20 by nursing facilities.

21 “(2) MINIMUM DURATION.—If a long-term care
22 insurance policy provides benefits for nursing facility
23 services—

24 “(A) the policy shall provide such benefits
25 with respect to all nursing facilities (as defined

1 in section 1919(a) or as subsequently provided
2 for by the NAIC in establishing uniform lan-
3 guage and definitions under section 2121(1)) in
4 the State, and

5 “(B) the policy shall provide not less than
6 365 days of such benefits with respect to all
7 such nursing facilities.

8 “PROHIBITION OF DISCRIMINATION AGAINST INDIVID-
9 UALS WITH ALZHEIMER’S AND RELATED DISEASES

10 “SEC. 2123. A long-term care insurance policy may
11 not provide benefits under the policy for an individual with
12 Alzheimer’s disease, with any related progressive degen-
13 erative dementia of an organic origin, or with any mental
14 disorder of a demonstrable organic origin, that are any
15 less advantageous than the benefits for an individual hav-
16 ing another medical condition for which benefits may be
17 made available.

18 “LIMITATION ON USE OF PREEXISTING CONDITION
19 LIMITS

20 “SEC. 2124. (a) INITIAL ISSUANCE.—

21 “(1) IN GENERAL.—Subject to paragraph (2), a
22 long-term care insurance policy may not exclude or
23 condition benefits based on a medical condition for
24 which the policyholder received treatment or was
25 otherwise diagnosed before the date of issuance of
26 the policy.

1 “(2) 6-MONTH LIMIT.—A long-term care insur-
2 ance policy may exclude benefits under a policy, dur-
3 ing its first 6 months, based on a condition for
4 which the policyholder received treatment or was
5 otherwise diagnosed during the 6 months before the
6 policy became effective.

7 “(b) REPLACEMENT POLICIES.—If a long-term care
8 insurance policy replaces another long-term care insurance
9 policy, the replacing policy shall waive any time periods
10 (including waiting periods, elimination periods, and proba-
11 tionary periods) applicable to preexisting conditions in the
12 new policy for similar benefits to the extent such time was
13 spent under the original policy.

14 “USE OF FUNCTIONAL ASSESSMENT

15 “SEC. 2125. (a) IN GENERAL.—If a long-term care
16 insurance policy limits the eligibility for, or level of, bene-
17 fits, the policy—

18 “(1) shall specify that eligibility for, and the
19 level of, benefits available under the policy are to be
20 based on a functional assessment (described in sub-
21 section (c)); and

22 “(2) shall specify the level (or levels) of phys-
23 ical, cognitive, or mental impairment required under
24 such an assessment to obtain benefits under the pol-
25 icy.

1 “(b) CONDUCT OF ASSESSMENT.—Such assessment
2 may not be conducted by a person who has a direct or
3 indirect ownership or control relation with the carrier issu-
4 ing the policy.

5 “(c) UNIFORM ASSESSMENT INSTRUMENT AND UNI-
6 FORM FORMULAS.—

7 “(1) UNIFORM ASSESSMENT.—The functional
8 assessment referred to in subsection (a) must—

9 “(A) be based on a professional assessment
10 of the policyholder’s physical, cognitive, and
11 mental abilities, and

12 “(B) be conducted in accordance with a
13 standard, reproducible, uniform assessment in-
14 strument and methodology designated under
15 the Standards.

16 “(2) UNIFORM FORMULAS.—Benefits shall be
17 determined in accordance with an eligibility formula
18 specified in the Standards and based on the assess-
19 ment described in paragraph (1).

20 “(d) APPEALS PROCESS.—Each long-term care in-
21 surance policy shall provide for an appeals process, meet-
22 ing the Standards, for individuals who dispute the results
23 of an assessment conducted under this section, including
24 any determination of eligibility, level of functional impair-
25 ment, or level of benefits.

1 “REQUIREMENTS FOR PREMIUMS AND PREMIUM
2 INCREASES

3 “SEC. 2126. (a) INITIAL ISSUANCE.—The premiums
4 charged for the initial issuance of a long-term care insur-
5 ance policy shall be established in accordance with a sys-
6 tem that ensures that premiums—

7 “(1) accurately reflect the true lifetime cost of
8 such a policy (in order to minimize premium rate in-
9 creases),

10 “(2) are fully supported by an actuarial memo-
11 random, and

12 “(3) utilize lapse rates and other assumptions
13 in accordance with guidelines as specified in the
14 Standards,

15 and that discloses the specifics of the assumptions utilized.

16 “(b) **ADDITIONAL SYSTEM REQUIREMENTS.**—The
17 standards established to carry out subsection (a) may in-
18 clude—

19 “(1) requirements and restrictions on the origi-
20 nal pricing structure and methodology;

21 “(2) a requirement that policies (particularly
22 indemnity policies) be non-cancellable and have pre-
23 miums that are fixed and level, except in the specific
24 cases of—

1 “(A) verified, substantial changes in mor-
2 tality and morbidity rates,

3 “(B) changes in medical technology which
4 have a major actuarial impact, and

5 “(C) changes in government specified eligi-
6 bility requirements, covered services, and defini-
7 tions which have a major actuarial impact; and

8 “(3) a requirement that policies (particularly
9 service-benefit policies) have guaranteed annual and
10 lifetime limits on premium rate increases, to be set
11 forth in such Standards.

12 “(c) RENEWALS.—Except as provided in subsection
13 (d)—

14 “(1) PROHIBITION ON INCREASES IN FIRST 3
15 YEARS.—No increase in premiums shall be allowable
16 during the first 3 years of a policy’s duration.

17 “(2) REQUIREMENTS FOR CERTAIN PREMIUM
18 INCREASES FOR INDIVIDUALS UNDER AGE 70.—In
19 the case of a policyholder or certificateholder who is
20 under the age of 70, a proposed premium increase
21 for renewal of the policy that would result either—

22 “(A) in the premium exceeding twice the
23 original premium amount, or

1 “(B) in a premium increase, over any 3-
2 year period, exceeding 30 percent of the pre-
3 mium in effect at the beginning of such period,
4 shall not be granted unless the requirements of sec-
5 tion 2165(a)(3) are met.

6 “(3) REQUIREMENTS FOR PREMIUM INCREASES
7 FOR INDIVIDUALS BETWEEN 70 AND 80 YEARS OF
8 AGE.—In the case of a policyholder or
9 certificateholder who is at least 70 years of age but
10 under the age of 80, no proposed premium increase
11 for renewal of the policy shall be granted if the pro-
12 posed premium increase would result either—

13 “(A) in a premium increase, over any 3-
14 year period, exceeding 15 percent of the pre-
15 mium in effect at the beginning of the period,
16 or

17 “(B) in a premium increase, over the 10-
18 year period ending upon attaining age 80, ex-
19 ceeding 50 percent of the premium in effect at
20 the earliest time covered during such period.

21 “(4) PROHIBITION ON PREMIUM INCREASES
22 FOR INDIVIDUALS 80 YEARS OF AGE OR OLDER.—In
23 the case of a policyholder or certificate holder of a
24 long-term care insurance policy who is 80 years of

1 age or older, the premiums for such policy may not
2 be increased.

3 “(d) SPECIAL RULES IN CASE OF INFLATION PRO-
4 TECTION.—In the case of a policy that includes inflation
5 protection benefits, the requirements of subsection (c)
6 shall not apply to any proposed or expected premium in-
7 creases if the increases are consistent with the increases
8 attributable to such inflation protection as scheduled with-
9 in the policy and were illustrated in a conspicuous manner
10 in the outline of coverage provided at the time of purchase.

11 “INFLATION PROTECTION

12 “SEC. 2127. (a) OPTIONAL RIDER AT TIME OF INI-
13 TIAL ISSUANCE.—

14 “(1) IN GENERAL.—Subject to paragraph (2),
15 each long-term care insurance policy shall provide
16 for inflation protection in accordance with paragraph
17 (3).

18 “(2) OPTION.—Paragraph (1) shall not apply
19 if, at the time of initial sale, the policy purchaser,
20 after being provided the information described in
21 section 2136(b)(9), executes a written waiver of such
22 inflation protection.

23 “(3) CHOICE AMONG TYPES OF INFLATION PRO-
24 TECTION.—

25 “(A) IN GENERAL.—In satisfying the re-
26 quirement of paragraph (1), each policy shall

1 provide the policyholder with a choice of the in-
2 flation protection described in subparagraph
3 (B) and the choice of any other inflation protec-
4 tion structure which the NAIC finds to be ap-
5 propriate and acceptable.

6 “(B) SPECIFIED INFLATION PROTEC-
7 TION.—The inflation protection described in
8 this subparagraph is protection that provides,
9 at the time of each annual renewal of a policy,
10 for an increase of a specified percentage (but
11 not less than 5 percent) in the dollar payment
12 levels and the maximum payment limit on bene-
13 fit coverage above the levels or limit in effect
14 during the previous policy year. In applying this
15 subparagraph, the increases shall be
16 compounded annually and the policy may pro-
17 vide for rounding such an increase to the near-
18 est multiple of \$1 (in the case of dollar pay-
19 ment levels) or \$100 (in the case of the maxi-
20 mum payment limit).

21 “(b) NAIC DETERMINATION.—The NAIC shall study
22 the issue of inflation protection to determine which types
23 of protection are appropriate and acceptable, and whether
24 it is appropriate to require that all long-term care insur-
25 ance policies must include provisions for protection

1 against inflation. If the NAIC determines that protection
2 against inflation should be a required feature of every
3 long-term care insurance policy, the NAIC shall determine
4 the characteristics and structure of not more than 3 types
5 of inflation protection, at least one of which must be in-
6 cluded in every such policy sold, effective 6 months after
7 the date of designation of such types of protection.

8 “NONFORFEITURE BENEFITS

9 “SEC. 2128. (a) IN GENERAL.—Each long-term care
10 insurance policy or certificate shall provide that if the pol-
11 icy lapses after the policy has been in effect for at least
12 a minimum period of time (specified in the Standards),
13 the policy will provide, without payment of any additional
14 premiums, benefits of a type and amount (specified in the
15 Standards) to the policyholder or certificate holder of the
16 lapsed policy.

17 “(b) STANDARDS.—The Standards shall provide that
18 the benefits under subsection (a) must increase based
19 upon the period of time in which premiums were being
20 received under the policy.

21 “DESIGNATION OF REPRESENTATIVES

22 “SEC. 2129. (a) IN GENERAL.—The carrier issuing
23 a long-term care insurance policy—

24 “(1) at the time of issuance of the policy shall
25 require the applicant or policyholder either—

1 “(A) to designate 1 or more representa-
2 tives whom the carrier shall notify in the event
3 that the policyholder fails to pay premiums, or

4 “(B) to provide a written waiver (signed
5 and dated by the applicant or policyholder) of
6 the right to make such designation; and

7 “(2) shall permit the policyholder to make or
8 alter such a designation not less frequently than an-
9 nually at the time of renewal.

10 “(b) NO LEGAL OBLIGATION TO PAY PREMIUMS.—
11 An individual designated as a representative under sub-
12 section (a) is not under any legal obligation to pay for
13 premiums or to otherwise act in the event of a notification
14 under this section.

15 “RENEWAL AND POLICY UPGRADES

16 “SEC. 2130. (a) IN GENERAL.—No long-term care
17 insurance policy may be rescinded, canceled, or
18 nonrenewed for any reason other than nonpayment of pre-
19 mium (subject to subsection (d) and any nonforfeiture
20 rights under section 2128) or fraud or material misrepre-
21 sentation (subject to subsections (c), (d), and (e) of sec-
22 tion 2145).

23 “(b) CONTINUATION AND CONVERSION RIGHTS FOR
24 GROUP POLICIES.—

25 “(1) IN GENERAL.—Each group long-term care
26 insurance policy shall provide covered individuals

1 with a basis for continuation or conversion in ac-
2 cordance with this subsection.

3 “(2) BASIS FOR CONTINUATION.—For purposes
4 of paragraph (1), a policy provides a basis for con-
5 tinuation of coverage if the policy maintains cov-
6 erage under the existing group policy when such cov-
7 erage would otherwise terminate and which is sub-
8 ject only to the continued timely payment of pre-
9 mium when due. A group policy which restricts pro-
10 vision of benefits and services to or contains incen-
11 tives to use certain providers or facilities, may pro-
12 vide continuation benefits which are substantially
13 equivalent to the benefits of the existing group pol-
14 icy.

15 “(3) BASIS FOR CONVERSION.—For purposes of
16 paragraph (1), a policy provides a basis for conver-
17 sion of coverage if the policy entitles each individ-
18 ual—

19 “(A) whose coverage under the group pol-
20 icy would otherwise be terminated for any rea-
21 son; and

22 “(B) who has been continuously insured
23 under the policy (or group policy which was re-
24 placed) for at least 6 months before the date of
25 the termination;

1 to issuance of a policy providing benefits identical to,
2 substantially equivalent to, or in excess of, those of
3 the policy being terminated, without evidence of in-
4 surability.

5 “(4) TREATMENT OF SUBSTANTIAL EQUIVA-
6 LENCE.—In determining under this subsection
7 whether benefits are substantially equivalent, consid-
8 eration should be given to the difference between
9 managed care and non-managed care plans.

10 “(5) GROUP REPLACEMENT OF POLICIES.—If a
11 group long-term care insurance policy is replaced by
12 another long-term care insurance policy purchased
13 by the same policyholder, the succeeding carrier
14 shall offer coverage to all persons covered under the
15 old group policy on its date of termination. Coverage
16 under the new group policy shall not result in any
17 exclusion for preexisting conditions that would have
18 been covered under the group policy being replaced.

19 “(6) PREMIUMS FOR REPLACEMENT OR CON-
20 VERSION.—In the case of a converted policy or a re-
21 placement policy issued by the same carrier that had
22 issued a previous policy and issued to the same
23 group or its successor, or issued to any individual
24 covered by the previous group policy, the premium
25 shall be calculated on the basis of the insured’s age

1 at the inception of coverage under the earliest pre-
2 vious policy which became the basis for the con-
3 verted or replaced policy in the case of benefits
4 which are the same as benefits that were provided
5 under any earlier policy.

6 “(c) GUARANTEED ISSUANCE.—

7 “(1) IN GENERAL.—A carrier that sells or is-
8 sues long-term care insurance policies shall guaran-
9 tee that such policies shall be sold or issued to an
10 individual if such individual meets the minimum
11 medical underwriting requirements of such policy.

12 “(2) POLICY UPGRADES.—

13 “(A) RIGHT TO PURCHASE POLICY THAT
14 CONFORMS TO STANDARDS.—Each long-term
15 care insurance policy in effect as of the effective
16 date of the Standards established under section
17 2102 shall permit the policyholder to purchase
18 a policy that meets all such standards and the
19 carrier shall directly inform each such policy-
20 holder of the right to purchase an upgraded
21 policy under this paragraph.

22 “(B) RIGHT TO PURCHASE SUPPLEMENTAL
23 UPGRADES.—

24 “(i) IN GENERAL.—If a carrier of a
25 long-term care insurance policy provides

1 for the issuance of policies with benefits
2 that are greater than the benefits pre-
3 viously provided under such policies, sub-
4 ject to clause (ii), the policyholder of a
5 long-term care insurance policy previously
6 issued by that carrier and still in force has
7 the right to purchase a policy that provides
8 for such upgraded benefits and the carrier
9 shall directly inform each such policyholder
10 of the existence of such an upgraded policy
11 and the right to purchase an upgraded pol-
12 icy under this paragraph.

13 “(ii) LIMITATION.—Clause (i) shall
14 not apply to a policyholder who is eligible
15 (or was eligible at any time within the pre-
16 vious 3 months) for benefits under the
17 long-term care insurance policy.

18 “(C) LIMITATION ON MEDICAL UNDER-
19 WRITING OF UPGRADED POLICIES REQUIRED
20 UNDER FEDERAL OR STATE LAW.—With re-
21 spect to a policy that offers upgraded benefits
22 in accordance with a new Federal or State re-
23 quirement, the carrier issuing the policy may
24 not impose additional medical underwriting cri-
25 teria, except that—

1 “(i) the carrier may establish a pre-
2 mium that is higher than the premium for
3 the previously issued policy only for the
4 benefits in the upgraded policy that exceed
5 the benefits in the previously issued policy,
6 to the extent consistent with a methodol-
7 ogy developed by the NAIC, and

8 “(ii) the carrier may impose addi-
9 tional medical underwriting criteria that is
10 not more stringent than that used for new
11 prospective purchasers—

12 “(I) in relation to benefits to the
13 extent they were not included in the
14 previously issued policy, and

15 “(II) in cases where the State in-
16 surance commissioner determines that
17 the absence of such underwriting
18 would result in adverse selection of in-
19 sured risks.

20 “(D) LIMITATION ON MEDICAL UNDER-
21 WRITING ON SUPPLEMENTAL UPGRADES.—With
22 respect to an upgraded long-term care insur-
23 ance policy that offers benefits that are greater
24 than the benefits required under Federal or

1 State requirements, the carrier issuing the pol-
2 icy—

3 “(i) except as provided in clause (ii),
4 may not impose additional medical under-
5 writing criteria in relation to benefits that
6 are the same as the benefits under the pre-
7 viously issued policy and the premiums
8 charged with respect to such benefits may
9 not be greater than the premiums charged
10 with respect to such benefits under the
11 previously issued policy, but

12 “(ii) may impose additional medical
13 underwriting criteria in cases where the
14 State insurance commissioner determines
15 that the absence of such underwriting
16 would result in adverse selection of insured
17 risks.

18 “(E) APPROVAL OF HIGHER PREMIUMS
19 REQUIRED.—In the case of a carrier that in-
20 tends to offer upgraded policies at premiums
21 that are higher than the premiums charged for
22 their existing policies, such carrier must have
23 such higher premiums approved through the
24 process specified in section 2165.

1 “(F) CREDIT TOWARD NONFORFEITURE
2 BENEFIT.—In the case that a policy is replaced
3 with an upgraded policy, the upgraded policy
4 shall provide for credit designed to assure re-
5 tention of a policyholder’s equity, according to
6 a formula specified by the NAIC, toward the
7 nonforfeiture benefit for periods of coverage
8 under the previous long-term care insurance
9 policy issued by the same carrier.

10 “(d) EFFECT OF INCAPACITATION.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), a long-term care insurance policy in effect
13 as of the effective date of the Standards established
14 under section 2102 may not be canceled for
15 nonpayment if the policy holder is determined by a
16 long-term care provider, physician or other health
17 care provider, in accordance with a uniform assess-
18 ment under section 2125, to be cognitively, mentally,
19 or physically incapacitated.

20 “(2) PERMITTED CANCELLATION.—A long-term
21 care insurance policy may be canceled under para-
22 graph (1) for nonpayment if—

23 “(A) the period of such nonpayment is in
24 excess of 30 days; and

1 “(B) notice of intent to cancel (and right
2 of reinstatement under paragraph (3)) is re-
3 ceived by all representatives designated by the
4 policyholder or certificate holder (in accordance
5 with section 2129) after the expiration of the
6 period specified in subparagraph (A) and not
7 less than 30 days prior to such cancellation.

8 “(3) REINSTATEMENT.—If a long-term care in-
9 surance policy lapses or is canceled for nonpayment
10 under this subsection, the policy may be reinstated
11 without any loss in the policyholder’s equity (for
12 purposes of a nonforfeiture benefit) if the policy-
13 holder pays all premiums owing within a period
14 (specified in the standards and of not less than 6
15 months) after the date of the lapse or cancellation.

16 “Subpart 2—Sales Practices

17 “CERTIFICATION OF TRAINING OF SALES AGENTS

18 “SEC. 2131. A person may not sell or offer for sale
19 a long-term care insurance policy unless the person has
20 been certified under the State regulatory program (or, in
21 nonregulatory States, by the Secretary) as having received
22 training (in accordance with section 2112) with respect
23 to such policies in accordance with the Standards.

24 “DUTY OF GOOD FAITH AND FAIR DEALING

25 “SEC. 2132. (a) IN GENERAL.—Each person who is
26 selling or offering for sale a long-term care insurance pol-

1 icy has the duty of good faith and fair dealing to the pur-
2 chaser or potential purchaser of such a policy.

3 “(b) PROHIBITED PRACTICES.—A person is consid-
4 ered to have violated subsection (a) if the person engages
5 in any of the following practices:

6 “(1) TWISTING.—

7 “(A) IN GENERAL.—Knowingly making
8 any misleading representation or incomplete or
9 fraudulent comparison of any long-term care in-
10 surance policy or carrier for the purpose of in-
11 ducing, or tending to induce, any person to re-
12 tain or effect a change with respect to a long-
13 term care insurance policy.

14 “(B) POLICY REPLACEMENT FORM.—With
15 respect to any person who elects to replace or
16 effect a change in a long-term care insurance
17 policy, the individual that is selling such policy
18 shall ensure that such person completes a policy
19 replacement form developed by the NAIC. A
20 copy of such form shall be retained by the sell-
21 ing individual and additional copies shall be de-
22 livered by the selling individual to the old policy
23 carrier, the new carrier, and the State insur-
24 ance commissioner.

1 “(2) HIGH PRESSURE TACTICS.—Employing
2 any method of marketing having the effect of, or in-
3 tending to, induce the purchase of long-term care in-
4 surance policy through undue pressure.

5 “(3) COLD LEAD ADVERTISING.—Making use
6 directly or indirectly of any method of marketing
7 which fails to disclose in a conspicuous manner that
8 a purpose of the method of marketing is solicitation
9 of insurance and that contact will be made by an in-
10 surance agent or insurance company.

11 “(4) ADDITIONAL PRACTICES.—Such sales
12 practices as the Secretary may specify in regula-
13 tions.

14 “(c) PERIODIC REPORTS AND ADDITIONAL UNFAIR
15 SALES PRACTICES.—The NAIC shall periodically report
16 to the Secretary on improper sales practices that should
17 be treated (under subsection (b)(4)) as violations of sub-
18 section (a). Any additional unfair sales practices specified
19 in regulations referred to in subsection (b)(4) shall only
20 apply to activities occurring after the date of promulgation
21 of the regulations.

22 “(d) PROHIBITION OF COMPLETION OF MEDICAL
23 HISTORIES.—A person who is selling or offering for sale
24 a long-term care insurance policy may not complete the
25 medical history portion of an application for any other in-

1 individual (other than a relative of the person). Except as
2 provided in the previous sentence, the medical history por-
3 tion of such application may be completed by any individ-
4 ual (including the applicant, an immediate relative of the
5 applicant, or the applicant's physician).

6 "FINANCIAL GUIDELINES

7 "SEC. 2133. The NAIC, simultaneously with the es-
8 tablishment of the Standards, shall develop recommended
9 minimum financial guidelines (including income, assets,
10 and other criteria) that an individual should meet before
11 purchasing a long-term care insurance policy. Such guide-
12 lines also shall include a requirement that every prospec-
13 tive purchaser is provided, before a purchase of a long-
14 term care policy, a written statement, in prominent type-
15 face, that long-term care insurance is not an appropriate
16 product for every consumer to purchase and that a pro-
17 spective purchaser should consider whether the pur-
18 chaser's financial situation necessitates such a purchase.

19 "PROHIBITION OF SALE OR ISSUANCE TO MEDICAID

20 BENEFICIARIES

21 "SEC. 2134. A person may not knowingly sell or issue
22 a long-term care insurance policy to an individual who is
23 eligible for medical assistance (other than only as a quali-
24 fied medicare beneficiary) under title XIX.

“PROHIBITION OF SALE OR ISSUANCE OF DUPLICATE
POLICIES

3 “SEC. 2135. (a) IN GENERAL.—A person may not
4 sell or issue a long-term care insurance policy—

“(1) knowing that the policy provides for coverage that, when combined with coverage provided in a service-benefit long-term care insurance policy (as defined in subsection (b)) in effect for the benefit of the same individual, would result in greater than 100 percent reimbursement for covered services (unless the policy is intended to replace such other policy), or

13 “(2) for the benefit of an individual unless the
14 individual (or a representative of the individual) pro-
15 vides a written statement to the effect that the cov-
16 erage—

17 “(A) does not duplicate other coverage in
18 effect under a service-benefit long-term care in-
19 surance policy, or

20 “(B) will replace another service-benefit
21 long-term care insurance policy.

22 “(b) SERVICE-BENEFIT LONG-TERM CARE INSUR-
23 ANCE POLICY DEFINED.—In subsection (a), the term
24 ‘service-benefit long-term care insurance policy’ means a
25 long-term care insurance policy which provides benefits

1 which are a percentage of the actual or reasonable cost
2 of the services furnished.

3 “PROVISION OF OUTLINE OF COVERAGE AND OTHER
4 INFORMATION

5 “SEC. 2136. (a) OUTLINE OF COVERAGE.—A person
6 may not sell or offer for a sale a long-term care insurance
7 policy for the benefit of an individual without providing
8 to the purchaser or potential purchaser (or representa-
9 tive), before such purchase, with—

10 “(1) a copy of the guidelines developed under
11 section 2133 and an explanation of such guidelines;

12 “(2) the consumer guide on the purchase of
13 long-term care insurance policies (written by the
14 NAIC), which shall include a personal assessment
15 form to assist in determining the purchaser’s finan-
16 cial and other need for long-term care insurance;
17 and

18 “(3) an outline of coverage that includes the in-
19 formation required under subsection (b).

20 In applying this subsection in the case of a group long-
21 term care insurance policy, the carrier issuing the policy
22 is responsible for the provision of the outline and informa-
23 tion to each certificate holder before the policy takes effect
24 with respect to that certificate holder.

25 “(b) CONTENTS OF OUTLINE OF COVERAGE.—The
26 outline of coverage for each long-term care insurance pol-

1 icy shall be in a uniform format, utilizing simple, easily
2 understood English, as prescribed in guidelines issued by
3 the NAIC. Each outline shall include (in accordance with
4 the Standards) at least the following:

5 “(1) A description of the principal benefits and
6 coverage (including any inflation protection) under
7 the policy, how such benefits and coverage compare
8 to the range of potential benefits and coverage avail-
9 able under such policies, and the eligibility criteria
10 (if any) for such benefits.

11 “(2) A statement of the principal exclusions, re-
12 ductions, and limitations contained in the policy.

13 “(3) A statement of the terms under which the
14 policy (or certificate in the case of a group policy)
15 may be continued in force or discontinued and the
16 terms for continuation or conversion.

17 “(4) A statement that the outline of coverage is
18 a summary only, not a contract of insurance, and
19 that the policy (or, in the case of a certificate, the
20 group policy under which the certificate is issued)
21 contains the contractual provisions that govern.

22 “(5) A description of the terms, specified in
23 section 2141, under which a policy may be returned
24 and the premium refunded.

1 “(6) Information (supplied either by the NAIC
2 or by the Secretary) on national average nursing
3 home lengths of stay and percentage of the popu-
4 lation that requires nursing facility or home care
5 services, broken down by age groups.

6 “(7) A statement of whether the carrier has a
7 right to increase premiums and, if such right exists,
8 the extent to which such premiums may be increased
9 and the circumstances under which such an increase
10 may occur.

11 “(8) Information (supplied either by the State
12 commissioner of insurance or the Secretary) on the
13 average costs and range of costs for home care and
14 nursing facility care in the State of residence and in-
15 formation (in graphic form) on the relationship of
16 the benefits provided under the policy to such State
17 average costs.

18 “(9) Information (in graphic form) on the pro-
19 jected effect of inflation on the value of benefits pro-
20 vided under the policy during a period of at least 20
21 years, except that such information need not cover
22 a period beyond the age of 85.

23 “(c) CERTIFICATES.—A certificate issued pursuant
24 to a group long-term care insurance policy shall include—

1 “(1) a description of the principal benefits and
2 coverage provided in the policy;

3 “(2) a statement of the principal exclusions, re-
4 ductions, and limitations contained in the policy; and

5 “(3) a statement that the group master policy
6 determines governing contractual provisions.

7 “(d) LONG-TERM CARE AS PART OF LIFE INSUR-
8 ANCE.—In the case of a long-term care insurance policy
9 issued as a part of or a rider on a life insurance policy,
10 at the time of policy delivery there shall be provided a pol-
11 icy summary that includes—

12 “(1) an explanation of how the long-term care
13 benefits interact with other components of the policy
14 (including deductions from death benefits);

15 “(2) an illustration of the amount of benefits,
16 the length of benefit, and the guaranteed lifetime
17 benefits (if any) for each covered person;

18 “(3) principal exclusions, reductions, and limi-
19 tations on benefits of long-term care; and

20 “(4) a description of the tax consequences of
21 redeeming the life insurance policy to pay for long-
22 term care.

23 “(e) ENFORCEMENT OF REPRESENTATIONS OF AD-
24 DITIONAL BENEFITS.—If a purchaser of a long-term care

1 insurance policy establishes, by a preponderance of the evi-
2 dence, that—

3 “(1) an agent sold, offered for sale, or issued
4 a long-term care insurance policy,

5 “(2) the agent represented that the policy con-
6 tained benefits which are in addition to the benefits
7 otherwise provided under the policy, and

8 “(3) the purchaser of the policy reasonably re-
9 lied upon such misrepresentations in purchasing the
10 policy,

11 then the carrier issuing the policy is liable to the purchaser
12 either for the cost of purchasing the services that would
13 have been covered if the benefits had been included in the
14 policy or for the provision of the additional benefits so rep-
15 resented. The carrier may recover the costs incurred under
16 this subsection from the agent whose actions gave rise to
17 such expenses.

18 “INFORMATION ON FINANCIAL ARRANGEMENTS WITH
19 GROUPS

20 “SEC. 2137. A person may not sell or offer for sale
21 a long-term care insurance policy to a member of an orga-
22 nization with which the person (or the carrier issuing the
23 policy) has a financial arrangement of any type unless the
24 person discloses (in accordance with the Standards) the
25 nature of the financial arrangement.

1 “Subpart 3—Carrier Standards

2 “REFUND OF PREMIUMS (FREE LOOK)

3 “SEC. 2141. If an application for a long-term care
4 insurance policy (or for a certificate under a group long-
5 term care insurance policy) is denied or an applicant re-
6 turns a policy or certificate within 30 days of the date
7 of its issuance, the carrier shall refund directly to the ap-
8 plicant, not later than 30 days after the date of the denial
9 or return, any premiums paid with respect to such a pol-
10 icy.

11 “MAILING OF POLICY

12 “SEC. 2142. If an application for a long-term care
13 insurance policy (or for a certificate under a group long-
14 term care insurance policy) is approved, the carrier shall
15 transmit to the applicant the policy of insurance not later
16 than 30 days after the date of the approval.

17 “PROMPT PAYMENT

18 “SEC. 2143. A carrier issuing a long-term care insur-
19 ance policy shall make payment promptly to satisfy claims
20 filed under such policy.

21 “INFORMATION ON CLAIMS DENIALS

22 “SEC. 2144. If a claim under a long-term care insur-
23 ance policy is denied or results in less than full payment,
24 the carrier shall, within 30 days of the date of the denial
25 or partial payment—

1 “(1) provide to the policyholder and to the per-
 2 son submitting the claim a written explanation of
 3 the reasons for the denial or partial payment;

4 “(2) make available to such person all informa-
 5 tion directly relating to such denial or partial pay-
 6 ment; and

7 “(3) inform the individual of the process estab-
 8 lished under section 2145(f) for the appeal of the
 9 claim denial.

10 “LIMITATION ON RESCISSION, CANCELLATION, OR

11 NONRENEWAL OR DENIAL OF CLAIMS

12 “SEC. 2145. (a) LIMITATION.—

13 “(1) IN GENERAL.—A carrier may rescind, can-
 14 cel, or nonrenew a long-term care insurance policy or
 15 certificate, or deny an otherwise valid claim under
 16 such policy, only in accordance with this section.

17 “(2) TIMELY RESOLUTION OF INSURABILITY
 18 QUESTIONS.—Before issuing a long-term care insur-
 19 ance policy or certificate with respect to coverage of
 20 an individual, the carrier shall resolve all reasonable
 21 questions relating to the insurability of the individ-
 22 ual (including, if the carrier underwrites such cov-
 23 erage, the completion of such underwriting). No
 24 claim under a long-term care insurance policy may
 25 be denied on the basis of a failure to disclose infor-
 26 mation at the time of delivery (and issuance for de-

1 livery) of the policy if the application for the policy
2 failed to request such information.

3 “(b) NONPAYMENT OF PREMIUMS.—A carrier may
4 cancel or nonrenew a long-term care insurance policy or
5 certificate for nonpayment of premiums, except as pro-
6 vided in section 2130(d).

7 “(c) MISREPRESENTATION RELATING TO INSURABIL-
8 ITY.—A carrier may cancel or nonrenew a long-term care
9 insurance policy or certificate, or deny an otherwise valid
10 claim under such policy or certificate based upon mis-
11 representation of facts relating to the insurability of the
12 individual, only—

13 “(1) based upon clear and convincing evi-
14 dence—

15 “(A) of misrepresentation of information
16 material to the acceptance for coverage, and

17 “(B) which involves a chronic condition or
18 dates of treatment before the date of the policy
19 application; and

20 “(2) if the carrier notifies the policyholder of
21 the carrier’s intention to cancel or nonrenew the pol-
22 icy or certificate or deny the claim not later than—

23 “(A) 60 days after the date the carrier dis-
24 covers the misrepresentation, or

1 “(B) 6 months (or 2 years in the case of
2 clear and convincing evidence that the misrepre-
3 sentation pertains to the condition for which
4 benefits are sought) after the date of issuance
5 of the policy or certificate,
6 whichever is earlier.

7 “(d) FRAUD RELATING TO INSURABILITY.—A carrier
8 may rescind, cancel, or nonrenew a long-term care insur-
9 ance policy or certificate, or deny an otherwise valid claim
10 under such policy or certificate based upon fraud relating
11 to the insurability of the individual, only—

12 “(1) based upon clear and convincing evi-
13 dence—

14 “(A) of fraud consisting of the knowing
15 and intentional misstatement of information
16 material to the acceptance for coverage, and

17 “(B) which involves a chronic condition or
18 dates of treatment before the date of the policy
19 application; and

20 “(2) if the carrier notifies the policyholder of
21 the carrier’s intention to rescind, cancel, or
22 nonrenew the policy or certificate or deny the claim
23 not later than 60 days after the date the carrier dis-
24 covers the fraud.

1 “(e) FRAUD OR MISREPRESENTATION RELATING TO
2 A GROUP POLICY.—In the case of a policyholder or certifi-
3 cate holder who is insured as part of a group, within 2
4 years after the date of issuance of the policy or certificate,
5 a carrier may rescind, cancel, or nonrenew the policy or
6 certificate, or deny an otherwise valid claim under such
7 policy, based upon fraud or misrepresentation of facts re-
8 lating to that individual’s status as a member of the group
9 or other relationship to that group at the time of initial
10 coverage of that individual under the policy or certificate.

11 “(f) APPEALS PROCESS.—A policyholder or certifi-
12 cate holder whose policy or certificate has been rescinded,
13 canceled, or nonrenewed, or whose claim has been fully
14 or partly denied, or whose claim has not been acted upon
15 with reasonable promptness shall have the right to a re-
16 view of such rescission, cancellation, nonrenewal, or denial
17 under a process specified in the Standards and shall be
18 granted an opportunity for a fair hearing by the carrier
19 in any case where the amount in controversy is at least
20 \$500. The Standards may provide for an appeal to the
21 State commissioner of insurance in an appropriate State.

22 “REPORTING OF INFORMATION; ACCESS TO INFORMATION

23 “SEC. 2146. (a) REPORTING OF INFORMATION.—
24 Each carrier issuing a long-term care insurance policy
25 shall periodically (not less often than annually) report to
26 the Commissioner or superintendent of insurance of each

1 State in which the policy is sold, and shall make available
2 to the Secretary, upon request, information respecting the
3 following:

4 “(1) The long-term care insurance policies of
5 the carrier that are in force.

6 “(2) Utilization of benefits and payment of
7 claims under the policy.

8 “(3) The ages of individuals purchasing the pol-
9 icy.

10 “(4) Advertising and other marketing material
11 utilized in connection with the sale of such policies,
12 including a copy of each such item.

13 “(5) Total premiums written and premiums
14 earned in the previous year.

15 “(6) The most recent premiums for such poli-
16 cies and the premiums imposed for such policies
17 during the previous 5-year period.

18 “(7) The absolute numbers and rates of lapse,
19 replacement, and rescission for each of its various
20 types of policies (and by agent for those agents who
21 sold at least 10 such policies and are in the highest
22 20th percentile of agents for that carrier with re-
23 spect to each such rate). For purposes of this para-
24 graph, there shall be a separate category for a lapse
25 due to the death of the policyholder.

1 “(8) The number of claims denied for such poli-
2 cies and the ratio of claims denied to claims submit-
3 ted for such policies. For purposes of this para-
4 graph, there shall not be included as a claim submit-
5 ted or denied any claim that is denied solely because
6 of the failure to meet a deductible, waiting period,
7 or exclusionary period.

8 “(9) Complaints received with respect to such
9 policies, and the resolution of such complaints.

10 “(10) The number of claims under such policies
11 being appealed to the commissioner of insurance of
12 the State and cases being litigated in response to de-
13 nials of claims or other policy disputes.

14 “(11) The number of denied claims that are re-
15 versed on appeal to the commissioner of insurance or
16 through litigation (as a percentage of claim denials
17 so appealed or being litigated) for such policies.

18 “(12) Such other information as is specified in
19 the Standards.

20 Information under this subsection shall be reported in a
21 format specified in the Standards.

22 “(b) ACCESS TO INFORMATION.—Each such carrier
23 shall make available to the Secretary and the Commis-
24 sioner or superintendent of insurance of each State in

1 which the policy is sold such additional information as the
2 Secretary, Commissioner, or superintendent, may request.

3 “(c) AVAILABILITY OF INFORMATION.—The State
4 commissioner of insurance of each State shall make infor-
5 mation under this section available, upon request, to the
6 NAIC and, to the extent consistent with other laws, to
7 other interested parties.

8 “PROVISION OF OUTLINE OF COVERAGE FOR RENEWALS

9 “SEC. 2147. Each carrier issuing a long-term care
10 insurance policy shall provide, at the time of renewal of
11 such a policy or, in the case of a policy issued through
12 a group, the anniversary date of purchase of the policy
13 an outline of coverage described in section 2136 to each
14 policyholder.

15 “PART C—ENFORCEMENT OF STANDARDS

16 “Subpart 1—General Provisions

17 “SECRETARIAL ENFORCEMENT AUTHORITY

18 “SEC. 2151. (a) IN GENERAL.—The Secretary shall
19 exercise authority under this section in the case of a non-
20 regulatory State.

21 “(b) LOSS OF STATUS.—If an association or its sub-
22 sidiary or a carrier is determined under this section not
23 to be in compliance with applicable Standards in a non-
24 regulatory State and is not determined to have come into
25 compliance with such applicable Standards at the end of
26 the 6-month period beginning on the date of the initial

1 determination of such noncompliance, any long-term care
2 insurance policy issued, sold, or offered for sale by such
3 association or its subsidiary or carrier in such State shall
4 be considered to be issued, sold, or offered for sale in viola-
5 tion of section 2101(a).

6 “COMPLAINTS AND INVESTIGATIONS

7 “SEC. 2152. (a) IN GENERAL.—The Secretary shall
8 establish procedures—

9 “(1) for individuals and entities to file written,
10 signed complaints respecting alleged violations of the
11 requirements of part B,

12 “(2) for responding on a timely basis to such
13 complaints, and

14 “(3) for the investigation of—

15 “(A) those complaints which, on their face,
16 have a substantial probability of validity, and

17 “(B) such other alleged violations of the
18 requirements of part B as the Secretary deter-
19 mines to be appropriate.

20 “(b) CONDUCT OF INVESTIGATIONS.—In conducting
21 investigations under this section, the Secretary shall have
22 reasonable access to examine evidence of any person or
23 entity being investigated.

24 “(c) TREATMENT OF CARRIER VIOLATIONS.—For
25 purposes of this subpart, a carrier whose policy was sold,
26 offered for sale, or issued by an agent in violation of sub-

1 part 2 of part B and who had any reason to know of such
2 violation but did not act immediately to correct such viola-
3 tion in good faith, shall be deemed to have violated the
4 provisions of such subpart.

5 “HEARINGS

6 “SEC. 2153. (a) IN GENERAL.—Before imposing an
7 order described in section 2154 against a person or entity
8 under this section for a violation of the requirements of
9 part B, the Secretary shall provide the person or entity
10 with notice and, upon request made within a reasonable
11 time (of not less than 30 days, as established by the Sec-
12 retary by regulation) of the date of the notice, a hearing
13 respecting the violation. If no hearing is so requested, the
14 Secretary shall impose a final and unappealable order.

15 “(b) CONDUCT OF HEARING.—Any hearing so re-
16 quested shall be conducted before an administrative law
17 judge under section 201. If no hearing is so requested,
18 the Secretary’s imposition of the order shall constitute a
19 final and unappealable order.

20 “(c) AUTHORITY IN HEARINGS.—

21 “(1) IN GENERAL.—In conducting hearings
22 under this section—

23 “(A) the Secretary and administrative law
24 judges shall have reasonable access to examine
25 evidence of any person or entity being inves-
26 tigated, and

1 “(B) administrative law judges, may, if
2 necessary, compel by subpoena the attendance
3 of witnesses and the production of evidence at
4 any designated place or hearing.

5 “(2) ENFORCEMENT OF SUBPOENAS.—In case
6 of contumacy or refusal to obey a subpoena lawfully
7 issued under this subsection and upon application of
8 the Secretary, an appropriate district court of the
9 United States may issue an order requiring compli-
10 ance with such subpoena and any failure to obey
11 such order may be punished by such court as a con-
12 tempt thereof.

13 “(d) ISSUANCE OF ORDERS.—If the administrative
14 law judge determines, upon the preponderance of the evi-
15 dence received, that a person or entity named in the com-
16 plaint has violated the requirements of part B, the admin-
17 istrative law judge shall state the findings of fact and issue
18 and cause to be served on such person or entity an order
19 described in section 2154 which includes the findings and
20 the basis of the order.

21 “CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY

22 “SEC. 2154. (a) CEASE AND DESIST ORDER.—

23 “(1) IN GENERAL.—Subject to the succeeding
24 provisions of this section, the order under this sec-
25 tion—

26 “(A) shall require the person or entity—

1 “(i) to cease and desist from such vio-
2 lations, and

3 “(ii) to pay a civil penalty in an
4 amount not to exceed \$25,000 (or \$15,000
5 in the case of a violation by an agent) for
6 each such violation; and

7 “(B) may require the person or entity to
8 take such other remedial action as is appro-
9 priate.

10 “(2) AMOUNT OF CIVIL PENALTY.—The amount
11 of a civil penalty under paragraph (1)(A)(ii) may
12 take into account the penalties imposed by a State
13 with respect to the same such violation.

14 “(3) PROCEDURES FOR CIVIL PENALTY.—The
15 provisions of section 1128A (other than the first
16 sentence of subsection (a) and other than subsection
17 (b)) shall apply to a civil money penalty under this
18 subsection in the same manner as such provisions
19 apply to a penalty or proceeding under section
20 1128A(a).

21 “(b) CRIMINAL PENALTY FOR MULTIPLE AGENT
22 VIOLATIONS.—In the case of an agent who has committed
23 multiple violations of the requirements of subpart 2 of
24 part B, such agent also may be imprisoned not more than

1 5 years, or fined in accordance with title 18, United States
2 Code, or both.

3 “(c) CORRECTIONS WITHIN 30 DAYS.—No order
4 shall be imposed under this section by reason of any viola-
5 tion if the person or entity establishes to the satisfaction
6 of the Secretary by clear and convincing evidence that—

7 “(1) such violation was due to reasonable cause
8 and was not intentional and was not due to willful
9 neglect, and

10 “(2) such violation is corrected within the 30-
11 day period beginning on the earliest date the person
12 or entity knew, or exercising reasonable diligence
13 should have known, that such a violation was occur-
14 ring.

15 “(d) WAIVER BY SECRETARY.—In the case of a viola-
16 tion which is due to reasonable cause and is not inten-
17 tional or due to willful neglect, the Secretary may waive
18 part or all of the civil money penalty imposed by sub-
19 section (a)(1)(A)(ii) to the extent that payment of such
20 penalty would be grossly excessive relative to the violation
21 involved and to the need for deterrence of violations.

22 “(e) REVIEW BY THE SECRETARY.—The decision and
23 order of an administrative law judge under this section
24 shall become the final agency decision and order of the
25 Secretary unless, within 30 days, the Secretary modifies

1 or vacates the decision and order, in which case the deci-
2 sion and order of the Secretary shall become a final order
3 under this section.

4 “(f) JUDICIAL REVIEW.—A person or entity ad-
5 versely affected by a final order issued under this section
6 may, within 45 days after the date the final order is is-
7 sued, file a petition in the Court of Appeals for the appro-
8 priate circuit for review of the order.

9 “(g) ENFORCEMENT OF ORDERS.—If a person or en-
10 tity fails to comply with a final order issued under this
11 section against the person or entity after opportunity for
12 judicial review under subsection (f), the Secretary shall file
13 a suit to seek compliance with the order in any appropriate
14 district court of the United States. In any such suit, the
15 validity and appropriateness of the final order shall not
16 be subject to review.

17 “ESTABLISHMENT OF TOLL-FREE TELEPHONE HOTLINE

18 “SEC. 2155. In the case of a nonregulatory State,
19 the Secretary shall provide for the establishment of the
20 toll-free telephone information and complaint system de-
21 scribed in section 2163 in carrying out this subpart in the
22 State.

1 “Subpart 2—Conditions for Approval of State
2 Regulatory Programs

3 “GENERAL REQUIREMENT

4 “SEC. 2161. (a) IN GENERAL.—The Secretary may
5 not approve a State regulatory program for purposes of
6 this title, unless the Secretary determines that the pro-
7 gram—

8 “(1) provides for the application and enforce-
9 ment of the Standards under part B; and

10 “(2) complies with the requirements of this sub-
11 part.

12 “(b) PERIODIC REVIEW OF STATE REGULATORY
13 PROGRAMS.—The Secretary periodically shall review State
14 regulatory programs to determine if they continue to meet
15 the requirements for approval under subsection (a) and
16 may determine whether a long-term care insurance policy
17 meets the applicable requirements of part B. If the Sec-
18 retary determines that a State regulatory program no
19 longer meets such requirements or is no longer in compli-
20 ance, before making a final determination that a State
21 regulatory program no longer meets such requirements,
22 the Secretary shall provide the State a hearing and an
23 opportunity of 6 months (or, in the case in which State
24 legislation is required in order for the State to be in com-
25 pliance with such requirements, such longer period as is

1 necessary to enact such legislation) to adopt such a plan
2 of correction as would permit the program to continue to
3 meet such requirements. If the Secretary makes a final
4 determination that the State regulatory program, after
5 such a hearing and opportunity, fails to meet such require-
6 ments, the Secretary shall assume responsibility under
7 section 2101(b) with respect to certifying policies in the
8 State and shall exercise full authority under subpart 1 of
9 this part for persons and entities in the State.

10 “ENFORCEMENT

11 “SEC. 2162. (a) IN GENERAL.—The enforcement
12 process under each State regulatory program shall be de-
13 signed in a manner so as to secure compliance with the
14 Standards within 30 days after the date of a finding of
15 noncompliance with such Standards.

16 “(b) PROCESS.—The enforcement process under each
17 State regulatory program shall provide for—

18 “(1) procedures for individuals and entities to
19 file written, signed complaints respecting alleged vio-
20 lations of the Standards;

21 “(2) responding on a timely basis to such com-
22 plaints;

23 “(3) the investigation of—

24 “(A) those complaints which, on their face,
25 have a substantial probability of validity, and

1 “(B) such other alleged violations of the
2 Standards as the program finds appropriate;

3 “(4) notice and opportunity for a hearing be-
4 fore executing sanctions;

5 “(5) the imposition of appropriate sanctions
6 (which include, in appropriate cases, the imposition
7 of a civil money penalty) in the case of a person or
8 entity determined to have violated the Standards;
9 and

10 “(6) an annual report to the Secretary on de-
11 tails concerning complaints filed under the process,
12 including the disposition of, and actions resulting
13 from, such complaints and cases where compliance
14 was not secured under subsection (a).

15 “(c) UNIFORM METHODOLOGY FOR RECORDING
16 COMPLAINTS.—The process under subsection (b) shall
17 provide for the recording of consumer complaints filed
18 under subsection (b)(1) in accordance with a uniform
19 methodology developed by the NAIC or the Secretary.

20 “TOLL-FREE TELEPHONE SYSTEM

21 “SEC. 2163. (a) IN GENERAL.—Each State regu-
22 latory program shall provide a toll-free telephone system
23 which provides—

24 “(1) for a system for the provision of informa-
25 tion concerning (A) how to file a complaint under
26 the process described in section 2162, (B) on com-

1 plaints received under such process respecting par-
2 ticular long-term care insurance policies or carriers,
3 and (C) the compliance of particular long-term care
4 insurance policies or carriers with the requirements
5 of this title;

6 “(2) information to employers and consumers
7 about carriers that offer long-term care insurance
8 policies in the area covered by the regulatory author-
9 ity; and

10 “(3) information on how to obtain counseling to
11 evaluate the benefits, coverage, conditions, exclu-
12 sions, and cost of such policies.

13 “(b) ACCESS TO INFORMATION ON COMPLAINTS.—

14 “(1) IN GENERAL.—Each State regulatory pro-
15 gram shall provide, through the toll-free telephone
16 system under subsection (a), for consumer access to
17 complaints filed with the State commissioner or su-
18 perintendent of insurance with respect to long-term
19 care insurance policies. Any such disclosure of com-
20 plaint information shall be accompanied by a general
21 disclaimer stating that no representations are being
22 made as to the merits of such a complaint. Any com-
23 plaint that has resulted in a final order in favor of
24 an agent or issuer of a policy shall be removed from

1 the records of complaints to which consumers have
2 access.

3 “(2) CONFIDENTIALITY.—The access provided
4 under paragraph (1) shall be limited to the extent
5 required to protect the confidentiality of the identity
6 of individual policyholders consistent with State law.

7 “PUBLICATION OF INFORMATION

8 “SEC. 2164. Each State regulatory program shall
9 publish annually a summary—

10 “(1) by carrier, of (A) the types of long-term
11 health care policies issued and (B) the types of com-
12 plaints filed concerning such policies, and

13 “(2) of the information reported by policy
14 under section 2146.

15 “PROCESS FOR APPROVAL OF PREMIUMS

16 “SEC. 2165. (a) IN GENERAL.—Each State regu-
17 latory program shall—

18 “(1) provide for a process for approving or dis-
19 approving proposed premium increases with respect
20 to long-term care insurance policies;

21 “(2) provide for the receipt and consideration of
22 public comments before approving or disapproving
23 such a premium increase;

24 “(3) provide, in the case of a proposed premium
25 increase described in section 2126(c)(2) or
26 2130(c)(2)(E), for—

1 “(A) a public hearing at least 30 days be-
2 fore the date of approval or disapproval of any
3 such increase; and

4 “(B) for notice to be sent to each policy-
5 holder who would be affected by such proposed
6 increase at least 30 days before the date of the
7 public hearing under subparagraph (A).

8 “(b) CONDITIONS FOR APPROVAL.—No such pre-
9 mium increase shall be approved (or deemed approved) un-
10 less the proposed increase is accompanied by an actuarial
11 memorandum which—

12 “(1) includes a description of the assumptions
13 which justify the increase,

14 “(2) fully supports the increase,

15 “(3) contains such information as may be re-
16 quired under the Standards,

17 “(4) is made available to the public, and

18 “(5) is certified by an actuary who has no fi-
19 nancial relationship with the carrier applying for the
20 increase.

21 “(c) SECRETARIAL AUTHORITY.—In the case of a
22 State without an approved regulatory program, the Sec-
23 retary shall provide for the activities described in sub-
24 sections (a) and (b).

1 “ANNUAL REPORTS

2 “SEC. 2166. Each State regulatory program shall
3 provide for annual reports to the Secretary on the imple-
4 mentation and enforcement of the Standards in the State.

5 “INCREASE IN FUNDING FOR LONG-TERM CARE INSUR-
6 ANCE, INFORMATION, COUNSELING, AND ASSISTANCE
7 THROUGH STATE REGULATORY PROGRAMS

8 “SEC. 2167. In addition to amounts otherwise au-
9 thorized to be appropriated, there are authorized to be ap-
10 propriated, under section 4360(f) of the Omnibus Budget
11 Reconciliation Act of 1990, \$10,000,000 for each of fiscal
12 years 1994, 1995, and 1996, to fund grant programs
13 under such section for the purpose of providing informa-
14 tion, counseling, and assistance relating to long-term care
15 benefits under this title and the procurement of adequate
16 and appropriate long-term care insurance.”.

17 **SEC. 3. STUDY OF STANDARD MEASURE OF VALUE FOR**
18 **LONG-TERM CARE INSURANCE POLICIES.**

19 The Secretary of Health and Human Services shall
20 provide for the conduct of a study to develop a standard
21 measure of value for long-term care insurance policies.
22 Not later than 2 years after the date of the enactment
23 of this title, the Secretary shall prepare and submit to the
24 appropriate committees of Congress a report concerning
25 such study.

1 **SEC. 4. WAIVER OF PAPERWORK REQUIREMENTS.**

2 Chapter 35 of title 44, United States Code, and Exec-
3 utive Order 12291 shall not apply to information and reg-
4 ulations required for purposes of carrying out this Act and
5 the amendments made by this Act.

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